



USE OF INTERNATIONAL EXPERIENCE IN IMPROVING LEGAL PRACTICE AND ITS APPLICATION IN THE REPUBLIC OF UZBEKISTAN

Abduraimova Diora Robertovna, Master of Law at Tashkent State Law University

Article history:	Abstract:
<p>Received: March 1st 2023 Accepted: April 6th 2023 Published: May 6th 2023</p>	<p>This dissertation is devoted to the study and analysis of the international experience of the United States, Germany, and China in the field of enhancing legal advocacy and its application in the context of the Republic of Uzbekistan. The objective of the research is to identify effective methods, principles, and practices employed in other countries with the aim of improving the work of legal advocacy, as well as to determine the feasibility and appropriateness of their implementation within the national legal advocacy system in Uzbekistan. The research will involve an analysis of the organizational and legal structure of the legal advocacy institution in the United States, Germany, and China, including their legislative foundations and operational mechanisms. The obtained results will enable the identification of prospective directions and recommendations for the enhancement of legal advocacy in Uzbekistan, taking into account the best international practices.</p>

Keywords: bar, advocacy, freedom, international experience, prosecution, legal profession, duties and responsibilities, federal state

The institution of advocacy plays a fundamental role in ensuring justice, protecting the rights and interests of citizens within the legal system of each state. The improvement of this institution is an integral part of developing the legal system and constructing a rule of law state. As a key element of the legal system, the legal profession holds a special status and plays an important role in providing legal protection to citizens, offering legal assistance, and ensuring equality of parties in judicial proceedings. However, due to rapid societal changes and the constant evolution of legal systems, it is necessary to enhance the institution of advocacy to effectively meet modern challenges and requirements. In this regard, the utilization of international experience becomes a crucial factor in improving legal practice. The study of foreign experience can help identify best practices in the training and education of lawyers, regulatory frameworks, and supervision of their professional activities, as well as ensuring the quality of legal services provided. Through comparative analysis, we will examine the characteristics and advantages of different models of advocacy in foreign countries, such as the United States, Germany, and China.

The institution of advocacy in the **United States** represents a unique system of legal protection, where lawyers play a significant role in upholding justice and the rule of law. Among the peculiarities of the advocacy institution in the United States, first and foremost is **the existence of a decentralized system**. Lawyers in the United States are registered in individual states and are regulated by corresponding

bodies in each state. As a result, the rules governing the practice of lawyers may vary across different states.

Secondly, it is important to highlight the fact that **lawyers are granted broad powers**. Lawyers in the United States have a wide range of powers, including representing clients in court and out-of-court proceedings, providing legal advice, and drafting legal documents.

Thirdly, there is a **certification procedure**. To become a lawyer in the United States, one must undergo a certification process, which includes passing special exams conducted at the state level and completing mandatory courses on legal ethics.

Fourth, the division of national and state jurisdiction. In the United States, there is a division of jurisdiction between federal and state courts. Lawyers in the United States must have a good understanding not only of federal legislation but also of the local laws of each state.

Fifth, there is significant **freedom in choosing a specialization**. Unlike in other countries where lawyers usually have to choose a narrow specialization, lawyers in the United States can handle a wide range of legal issues and practice in different areas of law.

In the United States, the institution of advocacy consists of multiple independent organizations and associations with various legal statuses and functions. Some of these organizations have mandatory membership for all lawyers, regardless of their place of work and practice, while



others are voluntary, and membership in them is optional. One of the main self-regulatory bodies for lawyers in the United States is the **American Bar Association (ABA)**. Although membership in the ABA is not mandatory for all lawyers, it exerts significant influence on the legal profession and is often used as the official representative of lawyers' interests in the United States¹. It deals with many issues related to the legal profession, including professional ethics, lawyer education and certification, and legislation related to the rights and obligations of lawyers.

In addition to the ABA, there are other lawyer organizations in the United States, such as **the National Bar Association (NBA)** and **the American Civil Liberties Union (ACLU)**, each having its own bylaws, rules, and membership procedures. Each of these organizations has its unique legal status and functions.

The National Bar Association (NBA) is an organization founded in 1925 that represents the interests of African-American lawyers, judges, and other legal professionals in the United States. It advocates for the protection of the rights and interests of its members and strives for justice and equality in the judicial system².

The American Civil Liberties Union (ACLU) is a non-profit organization founded in 1920 that focuses on protecting civil liberties and rights in the United States. It addresses various issues, including freedom of speech, religious freedom, LGBT rights, immigrant rights, equal education rights, freedom from violence, and more³.

In addition, each state in the United States has its own organization of attorneys that regulates the practice of law within that state. These organizations are called **"State Bars"** and they have jurisdiction over the licensing and discipline of attorneys in accordance with state laws. Moreover, State Bars typically provide professional education and uphold ethical standards for attorneys in accordance with state legislation⁴.

In the United States, the practice of law is a mandatory step towards obtaining a license to practice as an attorney. After graduating from law school,

graduates must pass the bar exam to become licensed to practice law in the state where they intend to work. Once licensed, they can begin practicing law in that state. To demonstrate their knowledge and expertise in the legal profession, attorneys can also obtain certifications from legal organizations, allowing them to advertise themselves as specialists in specific areas of law. It should be noted that the process of completing a legal internship and obtaining a license to practice law may vary slightly in each state, as the organization of the legal profession in the United States is regulated by state laws and rules.

For example, **the California Lawyers Association (CLA)** is the official organization of attorneys in the state of California and has its own bylaws, rules, and procedures for membership⁵.

Overall, the organizational forms of the legal profession in the United States can vary and depend on the attorney's place of work and practice. However, all attorney organizations in the United States have their legal statuses and functions that regulate their activities and relationships.

In Germany, the legal profession is regulated by the federal law **"Bundesrechtsanwaltsordnung" (BRAO)** and other laws that govern the professional activities of attorneys⁶.

To become an attorney in Germany, it is necessary to obtain a corresponding higher legal education (Jurastudium). Afterward, an examination called "Erste Juristische Prüfung" must be passed. Upon completing their studies, students must take this exam, which tests their knowledge and understanding of legal principles and their ability to apply them. Practical training, known as "Referendariat," is also required. After passing the exam, students who want to become attorneys must undergo a two-year preparatory training program in legal departments or courts, under the supervision of experienced attorneys and judges. Following this, the second legal exam, known as "Zweite Juristische Prüfung," must be passed. Upon successful completion of the exam, the graduate can apply for a license to practice as an attorney. **Licenses are issued by the bar associations**, after which the student becomes a full-fledged attorney in Germany⁷. Attorneys and judges have the same educational requirements. It should be

¹ "The Legal Profession in the United States: An Overview" Kevin R. Johnson, West Academic Publishing, 2021.

² <https://www.americanbar.org/>

³ <https://www.aclu.org/>

⁴

https://www.americanbar.org/groups/bar_services/resources/state_local_bar_associations/

⁵ <https://www.calbar.ca.gov/>

⁶ <https://www.gesetze-im-internet.de/brao/BJNR016350956.html>

⁷ <https://www.gesetze-im-internet.de/brao/BJNR016810950.html>



noted that there are several bar associations in Germany, one in each federal state. Each bar association in Germany issues licenses to attorneys to practice within its jurisdiction. All existing bar associations in Germany are united under a single Federal Bar Association.

In Germany, there is a bar association called the "Bundesrechtsanwaltskammer," which acts as a self-regulating organization and supervises the conduct of attorneys, as well as provides legal aid to attorneys. However, **membership in this association is not mandatory**. It coordinates the work of 28 regional bar associations ("Rechtsanwaltskammer") and develops rules of professional conduct for attorneys in Germany⁸.

As previously mentioned, membership in the bar association is not mandatory but is practically necessary for those who want to practice as attorneys. Membership in the bar association grants the right to practice as an attorney and is one of the requirements for obtaining a license to practice law. However, again, if a person is not a member of the bar association, it does not mean they cannot work in the legal field, for example, as a lawyer in a company or a legal consultant.

Unlike our republic, attorneys in Germany **are not civil servants or members of any government body**. They work on a private basis and cannot receive instructions from government authorities⁹. Thus, an important distinctive feature is **the independence of the German legal profession**. The concept of attorney's legal personality includes not only the protection of the private interests of the client but also public functions of ensuring the quality of justice, upholding fairness and legality. Therefore, the legal profession is authorized to fulfill the tasks of a constitutional state on **an equal** footing with judicial institutions, the public prosecutor's office, the police, and the enforcement authorities.

The Federal Regulation on the Legal Profession is a legislative act that regulates many aspects of the legal profession in the Republic of Uzbekistan. In addition to provisions known to our legal profession, this legislative act also establishes rules and procedures for the admission of qualified lawyers to practice as attorneys, defines the jurisdiction of bar associations, the qualification commission, and the

Federal Bar Association. It also regulates the participation of the legal profession in the Supreme Court of Germany and arbitration of attorney-related cases. Moreover, the Federal Regulation on the Legal Profession defines the rights and obligations of attorneys and regulates the jurisdiction of attorney courts. The Federal Regulation includes the establishment of **specialized attorney courts**, which deal with the resolution of cases in the field of legal profession, including disciplinary and appeals against decisions of bar associations and other bodies of the legal profession. Each regional attorney court has jurisdiction over cases of the corresponding regional bar association. Only attorneys can be members of the court, appointed for a term of 5 years by the justice administration of the federal state upon the recommendation of the bar association.

Cases related to the legal profession are heard by specialized **attorney courts (Anwaltsgerichte)** within the judicial authority of the Federal Republic of Germany. Their jurisdiction includes not only disciplinary cases but also appeals against decisions made by bar associations and other bodies of the legal profession. Regional attorney courts handle cases related to the bar association of their respective region. Attorney courts may include both attorneys and professional judges, but only an attorney can preside over the court.

The next instance is **the Attorney Court of Appeals (Anwaltsgerichtshof)**, established by the Higher Court of the federal state, which includes both attorneys and professional judges. However, only an attorney can serve as the chairperson and preside over a specific case.

The Senate for Attorney Matters (Anwaltssenat) oversees the activities of attorneys and is part of the structure of the Supreme Court of Germany. It consists of a chairperson and two judges from the Supreme Court, as well as two attorneys as assessors. All cases related to the legal profession are exclusively reviewed collegially.

According to **the Federal Regulation**, attorneys are required to have **professional liability insurance covering risks** of at least 250,000 euros per year (Berufshaftpflichtversicherung).

Another important document regulating the legal profession in Germany is **the Federal Law on Attorney's Fees Compensation**¹⁰. This law is oriented towards the real living standards of the

⁸ <https://www.brak.de/wir-ueber-uns/>

⁹ <https://www.germany.info/us-en/service/03-LegalSystem/lawyers-attorneys/926596>

¹⁰

https://www.gesetze-im-internet.de/englisch_rvg/index.html



population and establishes fee rates and reimbursable expenses that depend on the type of legal assistance and the estimated value of the case (Gegenstandswert). Additionally, the law provides for the right to receive legal assistance vouchers (Beratungshilfeschein) or legal aid for the conduct of legal proceedings, including representation costs (Prozesskostenhilfe), **at the expense of the state**. An attorney can also offer the client an individual fee agreement (Honorarvereinbarung), where the amount of compensation may differ from what is established by law. This allows attorneys to flexibly regulate their activities and set prices for their services according to the specific circumstances of each case.

Furthermore, the possibilities for attorneys to receive **a success fee for handling a case successfully are expanding**. This means that a portion of the fee is paid to them if they achieve a positive outcome for their client. In the United States, the United Kingdom, and France, the freedom to negotiate success fees is allowed from the beginning, while in Germany, this form of compensation was only permitted in specific cases starting from August 1, 2008. To enter into a success fee agreement, the client must be in a special position where the absence of such an agreement could have negative legal consequences with due diligence.

Every attorney engaged in legal activities in Germany possesses their own **professional electronic mailbox (besondere elektronische Anwaltspostfach – beA)**, which they use in their day-to-day work. This encrypted system is only accessible to attorneys registered in the federal directory and provides them with access to electronic justice.

It is important to note that **the access of foreign law firms** to the German market is expanding. Foreign companies can now engage in economic activities in the domestic market by entering into contracts with German or European attorneys to provide legal assistance. This allows for diversification in the forms of legal education through the involvement of foreign firms.

Overall, the legal profession in Germany has a high reputation, is considered an important element of the German legal system, and holds significant importance in German society and the state.

The experience of the **People's Republic of China (PRC)** with its long and complex history of the formation and development of the legal profession is also of significant interest. Renowned experts in comparative law, R. David and K. Zoffre-Spinosi, note that China places greater emphasis on conciliation

procedures rather than the judiciary. As a result, the country tends to resolve conflict situations not through judicial or other legal processes but with the help of mediators. This approach to legal understanding has contributed to the distinctive development of the Chinese legal profession, which has a long history in the People's Republic of China.

The right of the accused to defense is guaranteed in accordance with Article 125 of the 1982 Constitution of the People's Republic of China¹¹. In 1980, the "Temporary Rules on Lawyers and the Practice of Law" were adopted and published. Although these rules had a limited scope, they became a starting point for the revival of the legal profession in the People's Republic of China. As a result of their adoption, the number of professional lawyers in the country rapidly increased. However, these rules defined **the legal profession as a government institution**, which contradicted the very essence of this institution. In this regard, the Law of the People's Republic of China on Lawyers and Legal Representation was developed and adopted, which contained the main provisions on the legal profession, including the procedural status of lawyers, their rights and obligations, as well as forms of liability. Article 2 of the law states that lawyers are individuals who have obtained a license to practice law in accordance with the law and provide legal services to citizens¹². However, the law itself does not provide a clear definition of the term "lawyer." From an analysis of the content of the law, it can be concluded that a lawyer is an individual specializing in legal matters, possessing professional knowledge and skills in a specific legal field.

To obtain the status of a lawyer in China, one must have a higher education, successfully pass the unified national examination for the practice of law, and have at least one year of work experience in the legal profession. In the People's Republic of China, local bar associations are formed in various provinces, autonomous regions, centrally administered cities, and some cities with district divisions. By joining such a local bar association, all lawyers automatically become members of the All China Lawyers Association.

According to China's legislation on the legal profession, a lawyer is required to comply with the constitution, other laws of the country, as well as

¹¹

http://chinalawinfo.ru/constitutional_law/constitution/c_onstitution_ch3p7

¹²

http://www.chinaruslaw.com/RU/LawService/002/2011714142845_325298.htm



adhere to the principles of legal professional ethics and professional discipline. **Professional legal ethics** is one of the ten **compulsory courses** included in the system of core courses for legal specialties. The national teaching quality standards defined by the Ministry of Education of China on January 30, 2018, stipulate that law students must pass a course on professional legal ethics.

The procedure for conducting the state examination for lawyers in the People's Republic of China is regulated by a regulatory act called the "Measures for Implementing the State Jurisprudential Qualification Examination." This act was approved by the Order of the Ministry of Justice of the PRC on April 25, 2018, under number 140¹³. These measures establish two alternative procedures for obtaining higher education for future lawyers. According to these rules, an applicant may have a higher legal education of at least a bachelor's degree or a higher education in another field, but provided that they have at least three years of work experience in the legal field. In both cases, the education must be obtained in full-time form. Furthermore, it should be noted that only Chinese citizens can become lawyers in the People's Republic of China, as stated in item 9 of the "Measures for Implementing the State Jurisprudential Qualification Examination" (subsection 1), which specifies that individuals eligible to apply for the jurisprudential examination must be citizens of the PRC.

In China, a lawyer has the opportunity to practice their profession either in their **own law firm** or as **part of a law firm**. Lawyers in the People's Republic of China can organize and conduct their practice within their own law firm. In this case, they are independent legal entities responsible for their own activities and make all decisions regarding their practice. The second form of legal practice in China is membership in a law firm. A law firm is an organization that brings together several lawyers. According to the laws of the PRC, a firm can be organized based on a general partnership or a special general partnership. A general partnership implies joint liability of all its members for the debts and obligations of the firm, while a special general partnership does not limit the liability of partners for the debts and obligations of the firm. To establish a law firm, the presence of three or four lawyers with at least three years of experience in the legal profession is required. According to Chinese legislation, lawyers can also provide **legal consultation funded by the state**

budget. Each lawyer has the right to work in only one law firm or legal consultancy. The activities of law firms are regulated by the Law on Partnerships of China dated February 23, 1997. According to Chinese legislation, law firms and legal consultancies are not recognized as legal entities since partnerships do not have such a status.

It is worth noting that lawyers in China have a special legal status, which is reflected in their independent position in judicial proceedings. They are not part of the people's courts or the prosecution, and do not belong to any of the parties involved in the process. Lawyers in China are independent participants in legal proceedings, whose activities are aimed at protecting the lawful rights and interests of the parties to the process. They have not only procedural rights as participants in the process but also procedural rights that enable them to fulfill their duties as lawyers. Upon studying the Law of the People's Republic of China on Lawyers and Legal Representation, it can be noted that this law pays more attention **to the duties and responsibilities of lawyers** than it grants them powers. This situation is explained by the cautious approach of the state to the institution of the legal profession as active representatives of civil society.

A comparative analysis of the process of formation and development of legal practice in the aforementioned foreign countries demonstrates that the legal profession plays an important role in safeguarding public interests within the framework of judicial and legal activities in countries with a developed democratic tradition. In countries with entrenched democracy, lawyers are key representatives of the legal profession and serve as the main defenders of the rights and freedoms of citizens. They play a role in paving the way for public interests in the field of judicial proceedings and other mechanisms of legal protection.

In conclusion, we would like to note that the use of international experience in improving the practice of advocacy in the Republic of Uzbekistan contributes to the development of professionalism and competence among lawyers, strengthening the legal system, and protecting the rights and interests of citizens. However, it is important to consider the peculiarities of the national context and adapt best practices to the specific characteristics of the Uzbek legal system and socio-cultural aspects. Therefore, studying and applying international experience is an important step in improving the practice of advocacy in our country, promoting the professional development

¹³ http://www.sohu.com/a/229910326_762747



World Bulletin of Management and Law (WBML)
Available Online at: <https://www.scholarexpress.net>
Volume-22, May -2023
ISSN: 2749-3601

of lawyers, ensuring quality legal assistance, and advancing the rule of law.

REFERENCES

1. "The Legal Profession in the United States: An Overview"., Kevin R. Johnson., West Academic Publishing, 2021.
2. <https://www.aclu.org/>
3. https://www.americanbar.org/groups/bar_services/resources/state_local_bar_associations/.
4. <https://www.calbar.ca.gov/>.
5. <https://www.gesetze-im-internet.de/brago/BJNR016350956.html>
6. <https://www.brak.de/wir-ueber-uns/>
7. <https://www.germany.info/us-en/service/03-LegalSystem/lawyers-attorneys/92659>
8. http://chinalawinfo.ru/constitutional_law/constitution/constitution_ch3p7.
9. http://www.chinaruslaw.com/RU/LawService/002/2011714142845_325298.htm (дата обращения 16.05.2023)
10. http://www.sohu.com/a/229910326_762747